**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| VIRGIL ADDISON-EADY<br><br>Plaintiff,<br><br>v.<br><br>THE PHILADELPHIA PARKING AUTHORITY<br><br>Defendant. | :<br>:<br>:<br>:<br>:<br>:<br>:<br>:<br>: | CIVIL ACTION NO.<br>04-4392 |

**STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT.**

Defendant, The Philadelphia Parking Authority ("PPA"), submits this Statement of Undisputed Facts in Support of its Motion for Summary Judgment. As set forth in PPA's supporting Memorandum of Law, which is incorporated by reference, PPA is entitled to judgment as a matter of law based on plaintiff Virgil Addison-Eady's failure to establish the prima facie elements of his claims of race discrimination under 42 U.S.C. § 1981(a) (Complaint, Count I) or retaliation under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII"), and the Pennsylvania Human Relations Act, Act, 43 P.S. § 951 et seq. ("PHRA") (Complaint, Count II). As such, any disputed facts regarding the grounds for the termination of Addison-Eady's employment are not material.

The material undisputed facts, which focus on Addison-Eady's failure to present evidence that PPA treated him differently on account of his race, or in retaliation against his exercise of protected activity under Title VII or the PHRA, are as follows:

**UNDISPUTED FACTS.**[1]

1. PPA is an agency of the Commonwealth of Pennsylvania charged with administering the parking regulations of the City of Philadelphia, and maintaining various parking lots and garages (including the garages at Philadelphia International Airport). [See

[1]All cited materials are included in the Appendix filed in support of PPA's Motion for Summary Judgment. Deposition testimony is referenced as "[Witness] Dep at [page]." Documents are referenced as deposition exhibits or, if not marked as deposition exhibits, by subject matter description. Appendix page references are provided as "App [page]."

Complaint, ¶ 3 (App 112-113); PPA's Answer, ¶ 3 (App 222-223).]

2. PPA hired plaintiff Virgil Addison-Eady ("Addison-Eady") to work as a Parking Enforcement Officer ("PEO") in or about 1991. [Complaint, ¶ 7 (App 113); D-2 (App 10); Addison-Eady Dep at 9 (App 313).]

3. Addison-Eady was employed as a PEO throughout his tenure at PPA, and his job responsibilities — primarily involving the enforcement of Parking laws — essentially remained the same. [Addison-Eady Dep at 9-10 (App 313-314); D-7 (App 99-100).]

4. As a PEO, Addison-Eady was a member of and represented by American Federation of State, County, Municipal Employees, District Council 33, Local Union No. 1637 ("Union") for purposes of collective bargaining. [Addison-Eady Dep at 10 (App 314); see Collective Bargaining Agreement ("CBA") excerpts (App 215-220).]

5. Addison-Eady served the Union as a shop steward during some periods, and in that capacity was familiar with the contractual progressive discipline system and grievance procedure. [See e.g. Addison-Eady Dep at 53-55, 59, 71, 86-88, 116 (App 324-326, 329, 333).]

6. Pursuant to collectively bargained procedures, PEOs bid for available positions on day or night shifts every six months. [Addison-Eady Dep at 31-33 (App 319); see Letter dated December 16, 2002 and CBA excerpts (App 213-220).]

7. In December, 1996, Addison-Eady was suspended for insubordination, a suspension which was imposed despite intervention by the Union through the grievance process. [D-9 (App 101).]

8. On July 15, 1997, Addison-Eady was suspended for insubordination, this time for three days, again notwithstanding the Union's grievance. [D-9 (App 101).]

9. In January, 1998, Addison-Eady was suspended for three days for violation of PPA's sick leave rules. [D-26 (App 127).]

10. Addison-Eady was disciplined on seven separate occasions during August and September, 1998, for various violations of rules and/or failure to perform his job, including a one day suspension on September 1, 1998, and a three day suspension on September 4, 1998, for

failure to follow instructions. [Arbitration Award dated December 9, 2000 at 2-3 (App 149-150).]

11. This disciplinary actions culminated in Addison-Eady's termination on September 24, 1998, when he refused to perform his patrol duties due to his expressed concern with radio communication difficulties. [Id. at 3 (App 150).]

12. The Union filed a grievance challenging the termination and, after four days of arbitration hearings, by an Award dated December 9, 2000, the arbitrator allowed Addison-Eady to return to work without any back pay in light of the circumstances and nature of the disciplinary issues. [Id. at 23-25 (App 170-172).]

13. The Arbitrator concluded:

> "Given [Addison-Eady's] established pattern of insubordinate and unjustified behavior, a serious penalty is warranted.... [G]iven the seriousness of [Addison-Eady's] misconduct, I refuse to order make whole relief." [Id. at 23 (App 170).]

14. Thus, Addison-Eady was out of work for over two years without pay in connection with this discipline. [Id.; see Addison-Eady Dep at 124-125 (App 342).]

15. On December 21, 2001, Addison-Eady received a written warning for failure to perform assigned duties. [D-27 (App 128-129).]

16. In or about July, 2002, Addison-Eady was assigned to a night shift PEO position after PPA did not receive a bid sheet completed by Addison-Eady.

17. Addison-Eady, who had completed a bid sheet on prior occasions when he bid on day shift jobs, claims that on this occasion the sheet "was lost, or wasn't found, or wasn't turned in...." [Addison-Eady Dep at 133-135 (App 344-345).]

18. The Union did not pursue Addison-Eady's grievance of this matter to arbitration. [Id..]

19. On July 8, 2002, Addison-Eady filed charges with his Union against Anne Cohen, the Union's President, alleging that Cohen was acting in collusion with PPA and that she was violating the CBA because, according to Addison-Eady, "nothing was done in regards to me

being placed back in the shift that I was elected to represent [as shop steward]." [D-30 (App 137); Addison-Eady Dep at 142-143 (App 347).]

20. On or about August 9, 2002, Addison-Eady filed a Complaint against PPA with the Pennsylvania Labor Relations Board ("PLRB"), alleging that PPA assigned him to night shift in retaliation for his activities on behalf of the Union. [Complaint in Addison-Eady v. PPA, No. PERA-C-02-381-E (PLRB)(App 203-205).]

21. PPA denied such allegations, and emphasized that Addison-Eady's assignment was consistent with the procedures specified in the CBA. [PPA's Answer (App 206-208).]

22. On September 13, 2002, Addison-Eady filed a Complaint ("2002 Charge") with the Pennsylvania Human Relations Commission ("PHRC"), alleging that PPA discriminated against him on the basis of race by "unilaterally and improperly changing [his] work shift..., while simultaneously granting the requests of less-senior white employees...." [D-28 (App 130-134).]

23. PPA denied Addison-Eady's allegations of race discrimination, and again noted that Addison-Eady's assignment was pursuant to the CBA. [PPA's Answer to 2002 Charge (App 209-220).]

24. The PHRC dismissed Addison-Eady's 2002 Charge, finding no probable cause to support the allegations of unlawful discrimination. [Letter from Homer C. Floyd, PHRC Executive Director, dated April 16, 2003 (App 221).]

25. In January, 2003, Addison-Eady exercised his right to bid on a day shift job, which was awarded to him based on his seniority pursuant to the CBA. [Addison-Eady Dep at 47, 134, 144 (App 323, 345, 347).]

26. At all relevant times, PPA has maintained a policy that requires all PEOs to maintain a valid driver's license. [Addison-Eady Dep at 12-13 (App 314); Fenerty Dep at 11 (App 368); Dickson Dep at 10 (App 358); D-4 at 24-25 (App 38-39); D-7 (App 99-100); see also D-2 (App 10).]

27. PPA requires any PEO who experience a license suspension to immediately report the facts to his or her supervisor. [Addison-Eady Dep at 13-14, 20-21 (App 314-316); Dickson Dep at 19-20 (App 360); D-4 at 24-25 (App 38-29).]

28. Addison-Eady was aware of and understood these rules. [Addison-Eady Dep at 12-14, 20-21, 41-43 (App 314-316, 321-322); see D-2 (App 10); D-3 (App 11).]

29. If a PEO follows these rules and appropriately reports a license problem, it is PPA's practice, if possible, to help the employee address the license problem with the Pennsylvania Department of Transportation ("PennDOT"), and to accommodate the employee during the time of the license suspension by assigning the PEO to a patrol which does not require operation of a motor vehicle. [Fenerty Dep at 11-12 (App 368); Dickson Dep at 19-20 (App 360); see PPA's Responses to Second Set of Interrogatories and documents (App 247-310).]

30. Conversely, if PPA learns that a PEO has not appropriately reported a license suspension, it is PPA's practice to suspend the PEO with the intention to terminate the PEO's employment. [Id.]

31. As a method of enforcing these rules, PPA obtains updated information from PennDOT regarding the driver's license status of its employees from time to time. [Fenerty Dep at 7-10, 13-14 (App 367-369); see PPA License Status Report (App 173-202).]

32. On or about February 26, 2003, in connection with one of these license checks, PPA learned through information provided by PennDOT that Addison-Eady's driver's license had been suspended until January 17, 2005. [D-34 (App 144-146); see PPA License Status Report (App 173-202).]

33. As a result of his refusal to submit to a chemical test for driving under the influence on November 19, 2000, Addison-Eady received a one year license suspension which he did not receive credit for beginning to serve until January 17, 2003. [D-32 (App 141); D-33 (App 142-143); D-34 (App 144-146).]

34. As a result of his further violation of driving while his license was suspended on November 30, 2001, Addison-Eady received an additional one year license

suspension through January 17, 2005. [D-34 (App 144-146).]

35. On February 26, 2005, PPA suspended Addison-Eady, with the intention of terminating his employment on March 12, 2003, for his failure to notify PPA that his license had been suspended, and would remain suspended until January 17, 2005. [D-13 (App 102); D-14 (App 103).]

36. Of the three members of PPA's management who issued Addison-Eady's suspension with intent to discharge, two are African-American (Delores Starks and Arlene Jones) and one is Caucasian (Edward Thornton).

37. Addison-Eady and the Union filed a grievance challenging this suspension with intent to discharge and, pursuant to the grievance procedure required by the CBA, a Step I hearing was held on March 10, 2003, before the termination became effective. [D-18 (App 107-108); Addison-Eady Dep at 67-68 (App 328).]

38. At that hearing, Addison-Eady claimed that he had told four supervisors or management personnel about his license suspension: Vincent Fenerty, Elijah Wooden, Mimi Stokes and Delores Starks. [D-18 (App 107-108); Addison-Eady Dep at 82-83 (App 332).]

39. By his own admission, Addison-Eady never told anyone at PPA that his suspension would continue through January 17, 2005. [Addison-Eady Dep at 65 (App 327).]

40. At the Step I hearing, Addison-Eady and the Union also contended that PPA had treated numerous other PEOs — African-American, Caucasian and Hispanic (without any suggestion of race discrimination) — less severely. [D-18 (App 107-108).]

41. PPA rejected Addison-Eady's claims that he had given proper notice of his suspension or that other referenced employees were comparable to Addison-Eady given the particular facts of his case, and denied the grievance. [Id.]

42. The Union did not accept this outcome and, consistent with the grievance procedure, a Step II grievance hearing was held on March 26, 2003. [See D-21 (App 119-121).]

43. At that time, Addison-Eady claimed that, in addition to the four individuals he had identified at the Step I hearing, he also had told Barbara Dexter, an African-American, about his license suspension some time during his stint on night shift from July

through December 2003. [D-18 (App 107-108); D-21 (App 119-121); Addison-Eady Dep at 83 (App 332).]

44. Although Dexter corroborated Addison-Eady's statement, PPA rejected this as lacking credibility (Addison-Eady did not mention Dexter at the Step I hearing) and irrelevant since Dexter was not Addison-Eady's supervisor, Dexter had not reported the information to anyone else and, even accepting the truth of Addison-Eady's statement to Dexter, it did not occur until at least seven months after Addison-Eady had been stopped for driving on a suspended license in November, 2001. [D-21 (App 119-121).]

45. PPA again denied the grievance at Step II and confirmed Addison-Eady's termination. [Id.]

46. The Union submitted the grievance to Step III review by PPA's Executive Director, who also denied the grievance. [D-22 (App 122-123); D-23 (App 124); D-24 (App 125); D-25 (App 126).]

47. The Union did not demand arbitration or further protest Addison-Eady's termination. [D-23 (App 124); D-25 (App 126); Addison-Eady Dep at 117-119 (App 340-341).]

48. There is no evidence that Addison-Eady filed any formal claim against the Union in this regard. [Addison-Eady Dep at 119 (App 341).]

49. In his verified Complaint filed with the PHRC, Addison-Eady only alleged that he had told one member of PPA management about his license suspension — Elijah Wooden. [D-19 at ¶ 11 (App 110); Addison-Eady Dep at 103-104 (App 337).]

50. In his response to PPA's discovery requests, Addison-Eady identified only four persons who he allegedly told about his license suspension: Wooden, Dexter (who Addison-Eady did not name until the Step II hearing) and two people he never named during the grievance process: Linda Kammer and Pat Davis. [D-1 at Response to Interrogatory No. 1 (App 1); Addison-Eady Dep at 104-106, 113-114 (App 337-340).]

51. In those discovery responses, Addison-Eady did not state that he had notified Fenerty, Stokes or Starks, as he claimed — and as was denied by those persons — in the

grievance process. [Id.; see D-18 (App 107-108).]

52. According to Addison-Eady, PPA treated him differently than both Caucasian and African-American employees. [D-1 at Response to Interrogatory No. 3 (App 2); see Addison-Eady Dep at 86-97 (App 333-335).]

53. Addison-Eady has identified 15 employees who he contends PPA did not terminate despite failure to maintain a license or a more serious driving offense: 6 Caucasians, 2 Hispanics and 7 African-Americans. [D-1 at Response to Interrogatory No. 3 (App 2).]

54. Addison-Eady has identified 8 employees who he contends failed to give proper notice of a license problem but were not terminated by PPA: 2 Caucasians (Nick Antonio and Maureen Kelly) and 6 African-Americans (Charles Howell, Valerie Davis, Darryl Muchinson, Dwayne Davis, Annette Shadding and Celeste Brunson). [Addison Eady Dep at 87-97 (App 333-335).]

55. PPA's records reflect that only three similarly situated employees identified by Addison-Eady failed to report a license issue but were not terminated. Of these, two are African-American (Annette Shadding and Shawn Amos), and one is Caucasian (Maureen Kelly). [PPA's Responses to Second Set of Interrogatories (App 247-251) and attached documents for Shadding (App 260-272), Kelly (App 283-284) and Amos (App 298-308); see Fenerty Dep at 16-20 (App 369-370).]

56. One PEO singled out by Addison-Eady as an egregious case of someone treated more favorably than him — Annette Shadding, who failed to report two separate license suspensions and apparently drove PPA vehicles without a license, but was not terminated — is African-American, just like Addison-Eady:

> "And you have other ones here, like Annette Shadding, who had two infractions, driving Parking Authority vehicles while her license was suspended and was promoted. Was I treated differently? Yes. I feel as though I was treated differently." [Addison-Eady Dep at 137 (App 345); see also id. at 87-88 (App 333).]

57. Addison-Eady confessed little understanding of the basis for any race

discrimination claim in light of his claims that other African-Americans were treated more favorably:

> "Q. *** Mr.Addison-Eady, why do you think you were treated differently than all these other folks?
>
> "A. I can't tell you.
>
> "Q. In your Complaint you allege — one of the reasons you allege you think you were treated differently is because of race. I notice in this list that there appear to be several African-Americans who, to your understanding, weren't terminated under similar circumstances, or actually [worse] circumstances because your understanding is those folks didn't come forward with any notice [of a license suspension]?
>
> * * *
>
> "A. Probably because I was a good shop steward.
>
> "Q. So you think the reason you were treated differently is because you were a shop steward.
>
> "A. No. I said I don't know. I said I hope that they didn't get the same because I think I was a good shop steward, I hope.
>
> "Q. What leads you to believe that it was race discrimination as the reason why you were treated differently than all these other people, some of whom are African-Americans? Are you aware of any evidence at all that supports your charge and allegation that you were treated differently because of your race?
>
> * * *
>
> "[A.] I'm not sure." [Addison-Eady Dep at 98-99 (App 336).]

58. PPA has terminated similarly situated PEOs — both African-Americans and Caucasians — for failure to report a license suspension. [PPA's Responses to Second Set of Interrogatories and attached documents (App 247-310).]

59. PPA terminated Edward Henes and David Brazon, Caucasian PEOs, and Iris Hinton and Renault Samuel, African-American PEOs, after discovering that these employees had not reported license suspensions. [Id.]

60. Addison-Eady's termination occurred over five months after the Charge, and over two months after he had exercised his seniority rights to return to the day shift, essentially resolving the substance of the 2002 Charge.

61. There is no evidence of any retaliatory animus or antagonism towards Addison-Eady following the 2002 Charge, but for the fact of the termination itself, as Addison-Eady himself testified:

> "Q. Between September 13th of [2002, when the 2002 Charge was filed] and the time when you went out [injured on duty] in January of [2003], in that time frame, did anything happen which caused you to form some opinion or belief, either then or looking back on it now in hindsight, that you were treated differently, you suspect, because of you having filed a Complaint of race discrimination?
>
> "A. I don't know." [Addison-Eady Dep at 138].

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